

AN ACT to amend Tennessee Code Annotated, Title 63, relative to prohibiting providers of health care services from referring patients to facilities in which the providers have ownership interests and a financial conflict of interest.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 63, Chapter 1, is amended by adding the following language as a new, appropriately designated part 2:

Section 63-1-20___. Definitions. As used in this act, unless the context otherwise requires: (1) "Entity" or "health care entity" means and includes a health care facility and an agency, company or health care professional, other than the referring provider, providing health care services. (2) "Health care facility" means and includes any real property or equipment of a health care institution as that term is defined in § 68-11-102. (3) "Health care service" means and includes a diagnostic, treatment, therapy or rehabilitation service. (4) Provider means and includes any individual licensed or certified under Title 63.

Section 63-1-20___. Conflict of interest; referrals.

(a) Provider investment in health care can provide important benefits for patient care. However, when providers refer patients to entities in which they have an ownership interest, a potential conflict of interest exists. A provider having an investment interest in a health care entity shall not refer patients to the entity unless: (1) The provider performs health care services at the entity; or (2) The investment interest satisfies the requirements set forth in § 63-1-203.

(b) The provisions of this section shall not apply to providers when a health care facility leased, or leases, premises or equipment from an entity owning the premises or equipment even if providers have an ownership interest in the entity which leases the premises or equipment to the health care facility and refer patients to the health care facility, if:

(1) There is a written lease agreement between the health care facility leasing the premises or equipment and the entity owning the premises or equipment;

(2) The lease specifies the premises or equipment covered by the lease;

(3) The term of the lease is for not less than one (1) year;

(4) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions, and is not determined in a manner that takes into account the volume or value of any referrals by providers having an ownership interest in the entity leasing the premises or space to the health care facility; and

(5) A provider having an ownership interest in the entity leasing the premises or space to the health care facility discloses that interest to any patient referred by the provider to the health care facility.

Section 63-1-20____. Need and alternative investor criteria. There may be situations, however, in which a needed entity would not be built or instituted if referring providers were prohibited from investing in the entity and a need might exist when there is no entity of reasonable quality in the community or when use of existing entities is onerous for patients. Therefore, providers may invest in and refer to an outside entity, whether or not they provide direct care or services at or for the entity, if there is a demonstrated need in the community for the entity and alternative financing is not available. In such cases, the following requirements apply:

(1) Individuals who are not in a position to refer patients to the entity shall be given a bona fide opportunity to invest in the entity, and able to invest on the same terms that are offered to referring providers. The terms on which investment interests are offered to providers

shall not be related to the past or expected volume of referrals or other business from the providers;

(2) There is no requirement that any provider investor make referrals to the entity or otherwise generate business as a condition for remaining an investor;

(3) The entity shall not market or furnish its items or services to referring provider investors differently than other investors;

(4) The entity shall not loan funds or guarantee a loan for providers in a position to refer to the entity;

(5) The return on the provider's investment shall be tied to the provider's equity in the entity rather than to the volume of referrals;

(6) Investment contracts shall not "noncompetition clauses" that prevent providers from investing in other entities;

(7) Providers shall disclose their investment interest to their patients when making a referral. Patients shall be given a list of effective alternative entities if any such entities become reasonably available, informed that they have the option to use one of the alternative entities, and assured that they will not be treated differently by the provider if they do not choose the provider-owned entity. These disclosure requirements also apply to provider investors who directly provide care or services for their patients in entities outside their office practice;

(8) The provider's ownership interest shall be disclosed, when requested, to third party payers;

(9) An internal utilization review program is established to ensure that investing providers do not exploit their patients in any way, such as by inappropriate or unnecessary utilization; and

(10) When a provider's financial interest conflicts greatly with the patient's interest as to be incompatible, the provider shall make alternative arrangements for the care of the patient.

Section 63-1-20____. Cross referrals. Cross referral arrangements or schemes between providers or between providers and entities, in which the provider or providers know or should know that the arrangement has as its principal purpose generating referrals to an entity that if made directly by one of the participating providers would be in violation of this part, are prohibited.

Section 63-1-20____. Effect on prior investments. If providers have invested in entities prior to July 1, 1995, the providers shall reevaluate their activity in accordance with the provisions of this part and comply with its provisions. If compliance with the need and alternative investor criteria is not practical, it is essential that the identification of reasonably available alternative entities be provided.

Section 63-1-20____. Disposal of prior investments. (a) On and after July 1, 1996, all providers are required either to:

(1) Dispose of their ownership interests in entities outside their office practice at which they do not directly provide care or services when they have an investment interest in the entity unless the entity meets the requirements of § 63-1-202; or

(2) Cease referring patients to such entities.

(b) Providers are encouraged to seek out potential buyers of a minority race before disposing of facilities or equipment regulated by this part. Upon request, the office of minority business enterprise in the department of economic and community development shall provide information relative to potential minority purchasers.

Section 63-1-20____. Criminal law and procedure. Any provider who makes or causes to be made a referral prohibited by this part is in violation of T.C.A. § 63-1-120. Willful violations of this part are considered unprofessional conduct, which conduct is subject to licensure sanction by the provider's respective regulatory board including suspension, revocation or other restriction deemed appropriate by the board. In addition, the regulatory boards under Title 63

are authorized to impose civil penalties of an amount up to five thousand dollars (\$5,000) for each prohibited referral.

Section 63-1-20___. Publicly traded entities exception. The definition of investment interest does not include a publicly traded entity in which such provider has an investment interest if all of the following requirements are met:

(1) The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;

(2) The entity had, at the end of the corporation's most recent fiscal year, total assets of at least fifty million dollars (\$50,000,000), determined in accordance with generally accepted accounting principles, related to the furnishing of health services;

(3) The entity markets and furnishes its services to provider-investors and other providers on the same and equal terms;

(4) All stock of the entity, including the stock of any predecessor privately held company, is one class without preferential treatment as to status or remuneration;

(5) The entity does not issue loans or guarantee any loans for providers who are in a position to refer patients to such entity if the provider uses any portion of the loan to obtain the investment interest;

(6) The income on the provider's investment is not tied to referral volumes and is directly proportional to the provider's equity interest in the entity;

(7) The provider's investment interest does not exceed one half of one percent (.5%) of the entity's total equity; and

(8) The provider purchases the investment interest either:

(A) on terms generally available to the public; or

(B) in exchange for an investment interest acquired by the provider before July 1, 1995, provided the terms of the exchange are consistent with fair market value in an arms-

length transaction and are not related to the volume or value of any referrals from the provider to the corporation and the investment interest is not held after December 31, 1998.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This Act shall take effect on becoming a law, the public welfare requiring it.